

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEALS OF WILLIAM) APPEAL NOS. 07-A-2502
AND LORNA EICHELBERG from the decisions of) THRU 07-A-2507, 07-A-2509
the Board of Equalization of Benewah County for tax) AND 07-A-2510
year 2007.) FINAL DECISION
) AND ORDER

AGRICULTURAL PROPERTY APPEALS

THESE MATTERS came on for hearing December 18, 2007, in St. Maries, Idaho before Hearing Officer Linda S. Pike. Board Members Lyle R. Cobbs and David E. Kinghorn participated in this decision. Owner Lorna Eichelberg and Attorney Lawrence G. Sirhall, Jr. appeared for Appellants. Assessor Teresa Jeffrey, and Appraisers Karen Hammons and Ron Craig appeared for Respondent Benewah County. These appeals are taken from decisions of the Benewah County Board of Equalization (BOE) modifying the protests of the valuation for taxing purposes of properties described as Parcel Nos. RP006200200420A, RP006200300450A, RP006200200390A, RP006200200400A, RP006200200410A, RP006200200431A, RP006200300460A, RP006200300440A and RP0350200004B0A.

The issues on appeal are whether the subject parcels qualify for exemption pursuant to Idaho Code §§ 63-604(1)(ii), the agricultural exemption.

The decisions of the Benewah County Board of Equalization are reversed in part, and modified in part.

FINDINGS OF FACT

Appellants request agricultural exemption on all subject parcels. The respective parcel values are individually listed below.

Appeal No. 07-A-2502 - Parcel No. RP006200200420A

The assessed land value for this 1.720 acre lot is \$73,852. Appellants request the land

value be reduced to \$690.

Appeal No. 07-A-2503 - Parcel No. RP006200300450A

The assessed land value for this 1.01 acre lot is \$65,000. Appellant requests the land value be reduced to \$16,000.

Appeal No. 07-A-2504 - Parcel No. RP006200200390A

The assessed land value for this .98 acre lot is \$80,412. Appellants request the land value be reduced to \$393.

Appeal No. 07-A-2505 - Parcel No. RP006200200400A

The assessed land value on this 1.14 acre lot is \$61,462. Appellants request the land value be reduced to \$457.

Appeal No. 07-A-2506 - Parcel No. RP006200200410A

The assessed land value on this 1.64 acre lot is \$85,729. Appellants request the land value be reduced to \$658.

Appeal No. 07-A-2507 - Parcel No. RP006200200431A

An assessed land value on this 8.45 acre lot of \$100,750, improvements' valuation of \$54,770, other valuation of \$30,650, totaling \$186,170. Appellants request the land value be reduced to \$36,186, improvements' value be increased to \$72,402, other valuation reduced to \$960, totaling \$109,548.

Appeal No. 07-A-2509 - Parcel No. RP006200300460A

The assessed land value for this 1.530 acre lot is \$58,500. Appellants request the land value be reduced to \$14,400.

Appeal No. 07-A-2510 - Parcel No. RP006200300440A

The assessed land value for this .360 acre lot is \$26,000. Appellants request the land value be reduced to \$3,200.

Appellants presented Exhibits 1 through 9 to support the claim that subjects qualify for agricultural exemption. The items submitted were; maps identifying the parcels of interest in this appeal, Appellant's federal income tax returns for 2004, 2005 and 2006, expenses for the year 2007, Benewah County Ordinance Number 50, transcript of the hearing before the Benewah County BOE, Elevation Certificate for lot 43, Encroachment Permit, and photographs of subject parcels.

Appellants maintained subject lots 39 through 46 have been used as a viable tree farm since 1982. Ornamental trees have been growing on all the subject parcels every year and each lot contributes to the nursery production income.

The Taxpayer stated this past summer a grass fire caused by a neighboring property occurred on lots 44 through 46. An insurance claim was filed and a \$4,000 settlement check was received by Appellants.

Appellants maintained subject lots were affected by erosion and seedlings cannot survive along the shoreline of the river due to ice flows, thus limiting the nursery production along the river. It was further explained subjects are in a flood plain, therefore septic systems cannot be installed, which precludes any building on the subject lots.

Appellants stated subjects meet the requirements for the agricultural exemption and mixed use does not prohibit the parcels from being granted an agricultural exemption.

It was also explained City Ordinance 50 limits development of subject lots and at

minimum, the lots would need to be valued the same as other properties affected by the ordinance.

Taxpayers agreed subject parcels have also been used as rental campsites. Lots 44, 45 and 46 have no campsites and have not been rented out as such. There are a total of about 16 campsites located along the shoreline of the river, with the exception of lots 44, 45 and 46.

Respondent questioned Appellants' use of the subject parcels. The County submitted an area map showing the location of subject parcels, and photographs of subject parcels depicting camp sites.

Respondent examined Appellants' income and expense information and questioned each item showing farming expenses were down and income varied widely between campground rentals and nursery production. In 2004, income from tree sales was \$6,700 and campground rental income was \$4,159. In 2005, income from trees was \$6,066 and other income from campground rental was \$58,404. In 2006, tree income was about the same but the campground rental income was \$4,300.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination subjects' eligibility for exemption. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

The issue in this case is whether or not subject's qualify for an agricultural exemption.

Idaho Code § 63-604.

LAND ACTIVELY DEVOTED TO AGRICULTURE DEFINED. (1) For property tax purposes, land which is actively devoted to agriculture as part of an

agricultural enterprise shall be eligible for appraisal, assessment and taxation as agricultural property each year it meets one (1) or more of the following qualifications:

(a) The total area of such land, including the homesite, is more than five (5) contiguous acres, and is actively devoted to agriculture which means:

...

(ii) It is used to produce nursery stock as defined in section 22-2302(11), Idaho Code;

...

Idaho Code Section 22-2302 (11) "Nursery stock" includes all botanically classified plants or any part thereof, such as aquatic or herbaceous plants, bulbs, sod, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees, and shrubs, berry plants, and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale. The term does not include field and forage crops, seeds of grasses, cereal grains, vegetable crops and flowers, bulbs and tubers of vegetable crops, vegetables or fruit used for food or feed, cut trees or cut flowers unless stems or other portions thereof are intended for propagation.

It is apparent from the record that subject lots are being used for the production of nursery stock as defined in Idaho Code Section 22-2302. Income tax records were produced and receipts depicting nursery productions were supplied. However, what is not clear is the exact amount of production taking place on each parcel.

Both parties agree subjects are also being rented out as campsites. Respondent contended this fact disqualified subjects for agricultural exemption. We disagree. Nothing in the statute prohibits "dual use". The fact remains the parcels are being put to agricultural use, which is the controlling factor.

Sufficient evidence was not submitted by Respondent to support removing the agricultural exemption.

The Board must rule on the record before it and in this case Appellants have met the

burden of proof by submitting the proper documentation to determine that in fact subjects are being used for nursery production and thus qualify for agricultural exemption.

With respect to the Parcel No. RP006200200431A, the Board finds that removing the agricultural exemption on all but three (3) acres is warranted because Appellants stated that only three (3) of the 8.450 acres was devoted to agricultural use.

Given all this, we believe Appellant's claims are reasonable and supported. The decisions of the Benewah County Board of Equalization are reversed and modified as specified below.

<u>Parcel No.</u>	<u>Ruling</u>
RP006200200420A	Reversed Agricultural Exemption Granted
RP006200300450A	Reversed Agricultural Exemption Granted
RP006200200390A	Reversed Agricultural Exemption Granted
RP006200200400A	Reversed Agricultural Exemption Granted
RP006200200410A	Reversed Agricultural Exemption Granted
RP006200200431A	Modified Affirmed as to improvements valuation of \$54,770 and other valuation of \$30,650; Modified to grant agricultural exemption on 3 (three) of the 8.450 acres; the remaining acreage to be assessed at market value.
RP006200300460A	Reversed Agricultural Exemption Granted

RP006200300440A

Reversed

Agricultural Exemption Granted

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decisions of the Benewah County Board of Equalization concerning the subject parcels be, and the same hereby is, modified in part and reversed in part as stated above.

IT IS FURTHER ORDERED that any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellant.

MAILED MAY 1, 2008